

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RADHA GEISMANN, M.D., P.C.,

Plaintiff,

Case No. 14 Civ. 7009 (LLS) (KNF)

v.

ZOCDOC, INC., *et al.*,

Defendants.

NOTICE OF MOTION TO DISMISS OR, ALTERNATIVELY, TO STAY

PLEASE TAKE NOTICE that based upon the accompanying Memorandum of Law, and all other papers herein, defendant ZocDoc, Inc. (“ZocDoc”) will move this Court before the Honorable Louis L. Stanton, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21C, New York, New York 10007, at a date and time to be determined by the Court, for an order dismissing this case with prejudice, or alternatively, staying this case, and granting any further relief that may be necessary to achieve justice. The Complaint should be dismissed or stricken because plaintiff Radha Geismann, M.D., P.C. (“Geismann”) did not seek leave to file an amended complaint. *See* Fed. R. Civ. P. 15(a)(2). But even if the Complaint were procedurally proper, it should still be dismissed because (1) Geismann’s claims were mooted by ZocDoc’s offer of judgment, (2) Geismann’s TCPA count fails to state a claim to the extent it alleges an inadequate opt-out notice, and (3) Geismann’s conversion count fails to state a claim. Alternatively, if the case is not dismissed, it should be stayed pending resolution of critical and relevant petitions before the Federal Communications Commission.

Respectfully submitted,

ZOCDOC, INC.

By: /s/ Charles J. Nerko
One of Its Attorneys

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